

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
)
 vs.)
)
 EDWIN YOSHIHIRO FUJINAGA, *et al.*,)
)
 Defendants.)

Case No. 2:13-cv-01658-JCM-CWH

ORDER

INTRODUCTION

Before the Court is Plaintiff's Proposed Order Appointing an Equitable Receiver (doc. # 174), filed November 7, 2014, Defendants' response (doc. # 175), filed November 10, 2014, and Plaintiff's reply (doc. # 176), filed November 10, 2014. Also before this Court are the receiver bid proposals.

BACKGROUND

At a hearing conducted on October 30, 2014, this Court ruled on Plaintiff's motion to appoint a receiver and determined that it would recommend appointing a limited receivership to the district judge for the purpose of managing and maintaining real property in the instant case. See Doc. # 145; Doc. # 170. At the hearing, moreover, this Court directed the parties to meet and confer, and submit a proposed stipulated order addressing the issues raised by Plaintiff's motion, along with Defendants' and this Court's comments, and to file a joint status report no later than November 13, 2014. On November 12, 2014, the parties filed their joint status report. See Doc. # 177. Thereafter, Plaintiff filed the proposed order at issue. Plaintiff also forwarded the receiver bid proposals to this Court.

DISCUSSION

1. Proposed Order Appointing a Receiver

Plaintiff has submitted an unstipulated proposed order appointing an equitable receiver in the

1 instant case. See Doc. # 174. Defendants, in opposition, contend they did not stipulate to Plaintiff's
2 proposed order because it is "far more expansive" than this Court's ruling. Doc. # 175 at 2. For
3 example, Defendants point out that the proposed order erroneously includes "all personal property"
4 of Defendants. Id. at 3. Defendants explain that Plaintiff is not entitled to computers, servers, and
5 technical equipment, which are protected because they contain confidential information and have
6 nothing to do with the management or sale of real property. Defendants then point out that one of the
7 properties listed, the Harmon Medical Center, is neither vacant nor unused, and not entirely owned by
8 Defendants and, thus, should not fall within the scope of the Court's limited receivership order.
9 Defendants also contend that Defendant MRI International, Inc., should not be required at this point
10 to indemnify, defend, and hold harmless any receiver because Plaintiff has not yet established damages
11 in the instant case and Defendants prefer to retain any and all rights to hold a wayward receiver
12 accountable.

13 In reply, Plaintiff argues that personal property should be included in the proposed order
14 because it would be "disruptive" to allow Defendants continued access to personal property, and such
15 property cannot remain, especially once the real property is sold. See Doc. # 176 at 2. To address
16 Defendants' concerns, per Plaintiff, the Court could add a provision in the order directing the receiver
17 to maintain the confidentiality of information contained in any personal property, and to dispose of
18 such information in an appropriate manner and in consultation with Defendants. Plaintiff also argues
19 that the Harmon Medical Center should be included in the receivership roster because the property
20 "closed" several weeks ago due to nonpayment of its medical malpractice insurance. Id. To the extent
21 a tenant occupies a portion of the property, per Plaintiff, the order includes language that allows the
22 receiver to serve as a landlord and collect all rents. According to Plaintiff, moreover, the owner of the
23 Harmon Medical Center is no longer a viable legal entity, which confirms the need to appoint a
24 receiver for that property. Plaintiff further argues that the indemnification clause should remain to
25 protect the receiver from "intimidating strike suits" by Defendants or their creditors "seeking an unfair
26 advantage." Id. at 3.

27 As a preliminary matter, this Court notes that the proposed order is rife with issues, including
28 failing to adequately describe the properties, and failing to state why the properties should be included

1 in the receiver's roster (i.e., due to vandalism, waste, etc.). The proposed order also includes
2 provisions this Court did not grant, such as: (1) a provision allowing the receiver to employ other
3 persons to assist it in its duties, and (2) a provision allowing the receiver to list and market "all"
4 properties (i.e., real and personal property) for sale or lease, which Defendants rightly point out. This
5 Court addresses each of the issues raised by Plaintiff's proposed order:

6 **a. Property List**

7 This Court finds that the property list submitted by Plaintiff is inadequate. As such, Plaintiff
8 shall submit a list to this Court, attached as an exhibit to the proposed order, containing all the
9 properties Plaintiff believes the receiver should assume control over and conserve, and provide a fuller
10 description of each of these properties and reasons why (e.g., waste, vandalism, no viable owner) these
11 properties should be included on the list.

12 **b. Harmon Medical Center Property**

13 This Court finds that the property should be included on the list because, as Plaintiff rightly
14 points out, the property is closed and no viable legal owner exists. Moreover, to the extent a tenant
15 occupies a portion of that property, the receiver can serve as a landlord to manage the property and
16 collect rent.

17 **c. Personal Property**

18 This Court agrees with Plaintiff that it would be disruptive to allow Defendants continued
19 access to personal property. This Court also agrees with Plaintiff that the proposed order should
20 include a provision allowing the receiver to: (1) assume control over personal property, (2) maintain
21 the confidentiality of information contained in such property, and (3) dispose of such information in
22 an appropriate manner and in consultation with Defendants.

23 **d. Indemnification of Receiver**

24 This Court finds that the indemnification provision should remain in the proposed order to
25 allow the receiver to effectively carry out his or her duties.

26 **e. Employing Other Persons**

27 The Court finds the provision allowing the receiver to employ other persons is unwarranted.
28 If the issue ever arises, the receiver shall bring by motion his or her request.

4